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Error to Circuit Court, Russell County.

Action by C. W. House against the Universal Crusher Corporation. Judgment for defendant, and plaintiff brings error. Reversed.

S. B. Quillen and *W. A. Ayers*, both of Lebanon, for plaintiff in error.

Burns & Kelly, of Lebanon, for defendant in error.

BURNER *v.* BURNER.

Nov. 20, 1913.

[79 S. E. 1050.]

1. Vendor and Purchaser (§ 120*)—Performance of Contract.—Where the deed by which complainant conveyed to defendant provided that complainant should within five years from the date thereof go to defendant and ascertain whether he was satisfied with the transaction, and, if he was not, complainant should pay him a certain sum, and receive a reconveyance, a statement by defendant upon complainant's request whether he desired a reconveyance, that "I am about of the same opinion that I was when the transaction was had; get your money ready," meant that defendant was dissatisfied, and intended to reconvey and receive back the sum paid.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. §§ 215-217; Dec. Dig. § 120.* 13 Va.-W. Va. Enc. Dig. 495; 14 Va.-W. Va. Enc. Dig. 1049; 15 Va.-W. Va. Enc. Dig. 1036.]

2. Vendor and Purchaser (§ 120*)—Contract—Construction.—A deed provided that it was expressly understood by the parties that the grantor should within five years from the date thereof go to grantee, and ascertain whether he was satisfied with the transaction, and, if not satisfied, the grantor should pay him the amount received for the land, and grantee should reconvey the land to grantor, and, if grantor failed or refused to pay such amount to grantee, he agreed to convey to grantee another tract in addition to the tract herein conveyed. Held that, if grantee, when approached on the subject within five years from the date of the deed, declared that he was not satisfied with the transaction, grantor was entitled to a reconveyance upon paying grantee the price paid for the land.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. §§ 215-217; Dec. Dig. § 120.* 13 Va.-W. Va. Enc. Dig. 495; 14 Va.-W. Va. Enc. Dig. 1049; 15 Va.-W. Va. Enc. Dig. 1036.]

3. Vendor and Purchaser (§ 120*)—Performance of Conditions—Time of Performance.—Where a deed provided that grantor should within five years after date ascertain from grantee whether he was satisfied with the transaction, and, if he was not, grantor should pay

*For other cases see same topic and section NUMBER in Dec. Eg. & Am. Dig. Key No. Series & Rep'r Indexes.

him the price of the land, and grantee should reconvey, grantor was entitled to a reasonable time before the expiration of such five years to raise the money to perform his part of the contract, and seven days before the expiration of such period was a reasonable time, so that he could ascertain grantee's wishes seven days before that time in absence of objection at the time that the full five years had not expired.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. §§ 215-217; Dec. Dig. § 120.* 13 Va.-W. Va. Enc. Dig. 495; 14 Va.-W. Va. Enc. Dig. 1049; 15 Va.-W. Va. Enc. Dig. 1036.]

4. Vendor and Purchaser (§ 120*)—Performance of Condition—Sufficiency.—Where, pursuant to a deed which provided that grantor should ascertain five years after the date of the deed whether grantee was satisfied with the transaction, and, if not, should refund the price, return and receive a reconveyance, grantee stated that he was dissatisfied when questioned on the subject seven days before the expiration of the five years, when grantor went to some expense and trouble in raising the money to pay for a reconveyance, grantee could not afterwards change his mind and refuse to reconvey on the ground that grantor did not wait until the exact expiration of the five-year period.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. §§ 215-217; Dec. Dig. § 120.* 13 Va.-W. Va. Enc. Dig. 495; 14 Va.-W. Va. Enc. Dig. 1049; 15 Va.-W. Va. Enc. Dig. 1036.]

Appeal from Circuit Court, Page County.

Suit by David F. Burner against William E. Burner. From a decree dismissing the bill, complainant appeals. Reversed.

M. L. Walton, of Woodstock, and *R. S. Parks*, of Luray, for appellant.

Leedy & Berry, of Luray, for appellee.

POWHATAN LIME CO. *v.* AFFLECK'S ADM'R.

Nov. 20, 1913.

[79 S. E. 1054.]

1. Negligence (§ 65*)—Contributory Negligence—Application of Doctrine.—The doctrine of contributory negligence implies the existence of negligence.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. §§ 83, 94; Dec. Dig. § 65.* 10 Va.-W. Va. Enc. Dig. 377; 14 Va.-W. Va. Enc. Dig. 767; 15 Va.-W. Va. Enc. Dig. 724.]

2. Master and Servant (§ 286*)—Question for Jury—Master's Negligence—Unsafe Place to Work.—On evidence in an action for injuries to a servant resulting in death, held, that the question of defendant's

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.